

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34507

STATE OF IDAHO,	)	2008 Unpublished Opinion No. 495
	)	
Plaintiff-Respondent,	)	Filed: June 4, 2008
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JOSE BALDERAMA aka GUZMAN,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Thomas Neville, District Judge.

Order denying motion for credit for time served, affirmed.

Jose Balderama, Sayre, Oklahoma, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

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LANSING, Judge

In this appeal, Jose Balderama challenges the district court's denial of his motion for credit against his state sentence for time served in a federal penitentiary prior to Balderama's arrest by the State of Idaho.

I

BACKGROUND

On October 25, 1997, Balderama was taken into state custody on a charge of trafficking in heroin, Idaho Code § 37-2732B(a)(5). Prior to this charge, Balderama had been serving a sentence in a federal penitentiary on a conviction for illegal immigration. An Idaho jury found Balderama guilty of trafficking in heroin. He was sentenced to twenty-five years, with fifteen years fixed, to run concurrently with his federal sentence. Balderama was granted credit for the 451 days he served between his transfer to Idaho custody on October 25, 1997, and his sentencing on January 19, 1999.

On September 28, 2005, Balderama filed a motion for additional credit for time served, seeking to receive credit for all 757 days he served in federal prison prior to the state court sentencing on January 19, 1999. The district court denied this motion and Balderama timely appealed.

## II. ANALYSIS

Whether a sentencing court has properly awarded credit for time served on the facts of a particular case is a question of law, which is subject to free review by the appellate courts. Idaho Code § 18-309. *State v. Vasquez*, 142 Idaho 67, 122 P.3d 1167 (Ct. App. 2005).

Balderama argues that because his state and federal sentences were to run concurrently, he is entitled to credit for all the days he served in federal prison prior to being sentenced by the state of Idaho. Balderama further argues that the federal and state charges are related because even though his federal conviction was for an immigration offense, three dismissed federal drug charges were for the same incident giving rise to the state of Idaho's trafficking charge.

The entitlement to credit for prejudgment incarceration on a sentence of imprisonment is governed by I.C. § 18-309, which provides:

In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, *if such incarceration was for the offense or an included offense for which the judgment was entered.*

(Emphasis added.) The purpose of the statute is “to eliminate unequal treatment of indigent prisoners who, because they are unable to post bail, are confined longer than their wealthier counterparts.” *State v. Dorr*, 120 Idaho 441, 443, 816 P.2d 998, 1000 (Ct. App. 1991). Thus, time served in the custody of another jurisdiction on a different offense does not count toward the sentence imposed for the state offense. *Id.* As we said in *State v. Hale*, 116 Idaho 763, 765, 779 P.2d 438, 440 (Ct. App. 1989):

An entitlement to credit under I.C. § 18-309 depends upon the answer to a simple inquiry: Was the defendant's incarceration upon the offense for which he was sentenced? If a particular period of confinement served prior to the imposition of sentence is not attributable to the charge or conduct for which a sentence is to be imposed, the offender is not entitled to credit . . . .

*See also State v. Horn*, 124 Idaho 849, 850, 865 P.2d 176, 177 (Ct. App. 1993); *State v. Rodriguez*, 119 Idaho 895, 811 P.2d 505 (Ct. App. 1991). Idaho law is clear that a defendant is

not entitled to credit for incarceration that occurred before he was even charged with the present offense. *State v. Brashier*, 127 Idaho 730, 738, 905 P.2d 1039, 1047 (Ct. App. 1995).

The time that Balderama spent in federal prison prior to his arrest by the state of Idaho is not attributable to the Idaho charge of trafficking in heroin. Time served before October 25, 1997, was pursuant to a federal arrest and a sentence Balderama received for a federal offense. Balderama therefore is not entitled to additional credit for time served prior to October 25, 1997.

The fact that the district court here ordered that the state sentence would run concurrently with Balderama's pre-existing federal sentence has no effect upon the question of entitlement to credit. Under I.C. § 18-308, a sentencing court has discretion to allow a newly imposed sentence to run concurrently with pre-existing sentences or to make it consecutive to any sentence the defendant is already serving. *See State v. Brandt*, 109 Idaho 728, 710 P.2d 638 (Ct. App. 1985). An order making the new sentence run concurrently, however, does not alter the date on which the new sentence commences. That is, it does not make the new sentence effective retroactively to the date when the defendant began serving the prior sentence.

The district court's denial of Balderama's motion for credit for time served is affirmed.

Chief Judge GUTIERREZ and Judge PERRY **CONCUR.**